

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 950-B
ZC Case No. 01-32TA
(Text Amendment – 11 DCMR)
(Concrete Plants)
October 17, 2002

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code 2001 Ed. § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Code, 2001 Ed. § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of amendments to §§ 801 and 802 of the Zoning Regulations (Title 11 DCMR). The amendments subject concrete plants, which are first permitted in Commercial-Light Manufacturing districts, to special exception review. A notice of proposed rulemaking was published on August 2, 2002, at 49 DCR 7535. No comments were received in response to the Notice. However, the Zoning Commission corrected a minor codification error in the text of the proposed rulemaking when it took final action to adopt the amendments at a public meeting held on October 17, 2002. This final rulemaking shall become effective upon publication in the *D.C. Register*.

Set Down Proceeding

The Commission initiated this rulemaking in response to petitions from property owners and organizations located near Square 3846, the Brookland Neighborhood Association, ANC 5C, the single member Commissioner for ANC-SMD 5B-03, and Vincent Orange (Councilmember for Ward 5) (collectively, the "petitioners"). The petitioners asked for an emergency and proposed text amendment, expressing concerns about the appropriateness of concrete plant operations in close proximity to residential and other easily impacted uses. The petitioners requested that concrete plants be prohibited in all C-M districts, or as an alternative, be permitted only as a special exception in all C-M districts. The Office of Planning ("OP") supported the petitioners' proposed special exception alternative.

At its November 19, 2001, regularly scheduled meeting, the Commission agreed to set down this case for a public hearing based upon the special exception alternative. At the same time, the Zoning Commission approved an emergency rulemaking requiring special exception approval of

concrete plants in the C-M districts. Order No. 950 was published on December 28, 2001, at 48 DCR 11731. This emergency rulemaking was re-adopted on March 11, 2002. Order No. 950-A was published on May 24, 2002, at 49 DCR 4891.

After the set down vote, but prior to advertisement of the proposed rule, OP requested that the Commission modify its set down decision, to add language to address asphalt plants. The Commission granted OP's request at its regularly scheduled public meeting held April 19, 2002.

Existing Zoning

Concrete plants have been treated by the Zoning Administrator as permitted uses in C-M districts, falling under the category of, "Any light manufacturing, processing, fabricating or repair establishment." 11 DCMR § 801.7(j). Prior to this rulemaking, special exception uses within the C-M districts included massage establishments, solid waste handling facilities, intermediate recycling facilities, and electronic equipment facilities.

Description of the Text Amendment

Because of the potential adverse impact of concrete plants on nearby properties, the text amendment provides that such plants are to be permitted in C-M districts only as a special exception, subject to criteria established by this amendment. The amendment is intended to ensure that concrete plants do not adversely impact park, residential, retail, office, church, school, or institutional uses; do not restrict neighborhood revitalization efforts; and do not overload public streets with industrial traffic. In the absence of such a special exception, there is a large potential for concrete plants to have an adverse impact on surrounding areas where, as the OP points out, the vast majority of C-M districts are directly adjacent to residential districts.

Relationship to the Comprehensive Plan

As noted by OP, the Land Use Element of the Comprehensive Plan (1100.4(a)) describes the District's current industrially zoned land as, "a diminishing use that must. . . continue to provide essential jobs and services for District residents, with the understanding that every effort will be made to mitigate or eliminate adverse impacts on surrounding communities..." Similar language regarding eliminating adverse impacts of industrial and commercial uses exists in the Comprehensive Plan objectives for Ward 4 (1530.1(g)(2)(B)) and Ward 5 (1629.1(f)), as well as the Fort Totten Special Treatment Area (1122.2(f)). Making concrete plants subject to a special exception therefore is not inconsistent with the Comprehensive Plan in that it allows the use to continue, but ensures that it does not adversely impact surrounding communities.

Public Hearing

The Commission held a public hearing on this case on June 24, 2002. At that hearing, OP outlined its suggested changes to the rulemaking text. No other persons spoke at the hearing.

Proposed Rulemaking

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regularly scheduled monthly meeting on July 18, 2002, to approve the proposed amendments. A notice of proposed rulemaking was published in the D.C. Register on August 2, 2002, at 49 DCR 7535, for a 30-day notice and comment period.

At the request of OP, the proposed rulemaking approved by the Commission deleted the reference to asphalt facilities. The Commission also removed references to compliance with certain environmental regulations because these provisions are enforced by other District entities, clarified the term "residential street" (§ 802.17(b)), established a prohibition on the use of razor wire at concrete plants (§ 802.17(g)), established a single minimum height requirement for trees planted as buffers around concrete plants (§ 802.17(h)), clarified that the agency referrals would be coordinated by OP and added a referral to the Soil Resources Branch of the Department of Consumer and Regulatory Affairs (§ 802.18), relocated language pertaining to landscaping plans and application requirements, and deleted redundant language.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. The NCPC, by report dated September 6, 2002, found that the proposed text and map amendments will not adversely affect identified federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Final Rulemaking

The Commission took final action to adopt the rulemaking at a Special Meeting on October 17, 2002. The Commission agreed with the petitioners that concrete plants may have an adverse impact on adjacent properties, but chooses to pursue the special exception alternative. The Commission thinks/finds that concrete plants are important to the District's economic development and that the special exception process and associated criteria established by this rulemaking will adequately ensure that concrete plants will not have any adverse impacts on the surrounding community.

In consideration of the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to Chapter 8 of the Zoning Regulations (Title 11, DCMR).

- A. Section 801.7(j) is amended to read as follows (added wording is shown **bolded** and underlined):
 - (j) Any light manufacturing, processing, fabricating, or repair establishment, **except those uses for which a special exception is required pursuant to § 802;**

B. New §§ 802.17 through 802.20 are added to read as follows:

802.17 A facility that manufactures, processes, mixes, stores, or distributes concrete or the materials that are used to make concrete shall be permitted, provided that the following requirements shall be met:

- (a) No portion of the facility, including the land used by such facility, shall be located within two hundred feet (200 feet) of a residential property line or of any property that is a public park or is used for retail, office, church, school, or institutional purposes;
- (b) There shall be no truck access, parking, standing, or queuing to the facility from any street or block-long portion of a street for which fifty percent (50%) or more of the abutting properties on either side are used for residential purposes;
- (c) No truck dumping or picking up concrete or related materials shall park, stand, or queue for the facility along any public right-of-way. Vehicular traffic resulting from operations at the facility shall not obstruct traffic and the location of the facility shall provide access from a paved street with a road base capable of withstanding anticipated load limits;
- (d) Any facility located within five hundred feet (500 feet) of a residence district shall not be in operation between 7:00 p.m. and 7:00 a.m. Hours of operation shall include the arrival and departure of trucks;
- (e) The use shall not have unacceptable adverse impacts on the character of the neighborhood due to traffic, parking, or other objectionable conditions;
- (f) The facility shall meet the “Standards of External Effects” pursuant to § 804;
- (g) The facility shall be enclosed on all sides by a fence or wall at least ten feet (10 feet) in height. The public view side and the side of the facility facing residence districts or nearby or adjacent property used as a public park or for retail, office, church, school, or institutional purposes shall be landscaped and shall have an opaque screen, fence or wall, not less than ten feet (10 feet) in height. The use of barbed wire or razor wire that is visible from residential or public space is prohibited; and
- (h) Landscaping standards shall be applied as follows:
 - (1) A landscape area of evergreen trees shall be maintained in the front, side and rear yards, and along all public rights-of-way;

- (2) The landscaping shall be maintained in healthy growing condition; and
- (3) The trees shall be a minimum of eight (8) feet in height when planted.

802.18 The Board shall submit an application for a concrete plant to the D.C. Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Public Works, Transportation, and Health, the Soil Resources Branch of the Department of Consumer and Regulatory Affairs and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

802.19 The applicant for a concrete plant special exception shall provide the following:

- (a) A site plan showing the layout of the proposed facility, including fences and screens, street access, parking, and queuing areas;
- (b) A landscape plan showing the planting locations and soil preparation techniques;
- (c) A lighting plan showing the proposed lighting locations, illumination spread, and noting the proposed height and wattage of the lighting fixtures;
- (d) A traffic study which indicates truck routes to and from the facility on streets abutting residential neighborhoods, with the objective of minimizing potential adverse impacts on adjacent neighborhoods; and
- (e) A description of the facility's methods and specifications for the control of odor, dust, smoke and other air pollutants, and noise.

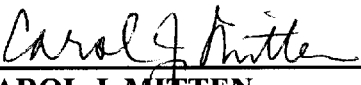
802.20 In addition to any other conditions deemed necessary to mitigate potential adverse impacts of the concrete plant, the Board may impose additional conditions pertaining to design, screening, buffering, lighting, soundproofing, signs, methods and hours of operations, or any matter necessary to protect adjacent and nearby property, particularly with respect to protecting residential property from excessive noise and truck traffic.

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Vote of the Zoning Commission taken at its public meeting on July 18, 2002, to approve the proposed rulemaking: **5-0-0** (Carol J. Mitten, Peter G. May, Anthony J. Hood, John G. Parsons, and James H. Hannaham to approve).

This order was adopted by the Zoning Commission at its Special Meeting on October 17, 2002, by a vote of **5-0-0** (Anthony J. Hood, Carol J. Mitten, James H. Hannaham, Peter G. May, and John G. Parsons to adopt).

In accordance with the provisions of 11 DMCR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on **FEB - 7 2003**.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

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The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.